

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow.

Claims 1-8 are presently pending. Claims 4 and 8 are currently being amended. Claim 4 is amended to insert the ATCC deposit accession number and claim 8 is amended to correct a typographical error.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

Obviousness-Type Double Patenting

Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Plant Patent Nos. 13789, 13842, 13786 and 13818 because the Examiner alleges that claims 1-3 are not patentably distinct from each other because the plant patents each claim a multiflorescent African Violet plant. In response to these rejections, applicant herewith files a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome this rejection. These allegedly conflicting patents, U.S. Plant Patent Nos. PP13,786; PP13,789; PP13,818; and PP13,842 are commonly owned with the instant application. It is requested that this rejection be withdrawn.

Objections to the Specification

The specification on pages 4, 6 and 8 have been objected to for not containing the ATCC accession number of the deposited seeds and for not containing the U.S. Plant Patent Numbers. These pages of the specification have been corrected. It is requested that this objection be withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph

Enablement

The Examiner rejects claims 1 – 8 as not being enabled for one skilled in the art to make and/or use the invention. To overcome this rejection, the Applicant hereby submits evidence of seed deposit with the American Type Culture Collection (ATCC). A copy of the International Form from the ATCC evidencing deposit of seeds is hereby attached. Seeds from the cross of African Violet cultivar ‘SB 4-2 Muflo’ with cultivar ‘P 6/6’ were received by the ATCC on January 16, 2002, and designated PTA-3982. The required deposit information, specifically Patent Deposit Designation PTA-3982, is provided in the specification and claims, as well as in the declaration by the undersigned attorney setting forth the requested information.

Applicants submit that this deposit, inserted information and the enclosed declaration overcomes this rejection. Applicants respectfully disagree that claims 1-3 and 5-8 should be limited to the deposited material and progeny there. Applicant has deposited the seeds resulting from a cross of ‘SB 4-2 Muflo’, a mutant plant obtained from African Violet seeds from the cross of cultivars ‘H 25/2’ and ‘G 68/1’ that were incubated on LDEF for six years. ‘SB 4-2 Muflo’, which exhibits the multiflorescence trait, was crossed to ‘P6/6’, a diverse African Violet plant, to introgress the multiflorescence trait into diverse genetic backgrounds. The seeds from this cross were deposited at the ATCC. Applicants submit that the deposit of these seeds are sufficient to enable the pending claims. Example 2 and Figures 4-8 demonstrates the crossing of the multiflorescence trait of ‘SB 4-2 Muflo’ into diverse genetic African Violet backgrounds to produce new and unique multiflorescence cultivars. The deposited seeds are representative of seeds from such a cross. Applicants submit that they have shown that the multiflorescence trait can be successfully fixed in the breeding material so that this trait can be predictably bred into diverse African Violet genetic backgrounds. Therefore, the deposit of seeds, which can be cultivated to produce plants that can be subsequently crossed with African Violets with diverse genetic backgrounds, enables all of the pending claims. In view of these arguments, applicant request withdrawal of this rejection.

Written Description

The Examiner rejects claims 1-3 and 7 as containing subject matter which was not described in the specification in such a way to reasonably convey to a skilled person at the time of filing the present invention that applicant had possession of the present invention. These claims are directed to any viable African Violet plants or seeds that produce a plant that possesses at least one axil that produces more than one flower stem. The Examiner considers that the disclosed embodiments are not representative of the enormous number of products claimed.

Applicant respectfully traverses the rejection. Applicant asserts that the specification does provide, in the Examples and Figures, an adequate written description showing possession of the invention by applicant. The specification describes crossing ‘SB-4-2 Muflo’ to diverse African Violet plants to introgress the multiflorescence trait into diverse genetic backgrounds. In response to the Examiner’s inquiry as to whether the phenotype of the claimed plant has been described, applicant refers the Examiner to the specification, pages 9-12, which discloses the phenotype of ‘SB-4-2 Muflo’. Particularly, the multiflorescence trait of this plant is described as “...2-3 flower stems per leaf axil, 13-16, or more, upright flower stems per plant, each of which carries 10-13, or more, flowers.” (See page 9, lines 18-20.)

Applicant submits that prior to the filing of the present application, traditional breeding techniques failed to produce African Violet cultivars that stably produced more than one flower stem from one leaf node or leaf axil. The present invention provides African Violets that contain at least one leaf axil that produces more than one flower stem. Applicants submit that the multiflorescence phenotype described as more than one flower stem on each leaf axil is a trait that is identifiable by a skilled person in the art. The specification provides guidance to the skilled person to cross plants, where at least one of the plants displays at least one leaf axil that produces more than one flower stem, and to identify plants that possess this desired phenotype. Applicant have provided an adequate written description to identify African Violet plants that possess this phenotype. Whether these plants possess additional traits is irrelevant as long as the African Violet possesses the

multiflorescence trait as recited in Claims 1-3 and 7. In view of these arguments that show the specification adequately describes the claimed African Violets, it is requested that this rejection be withdrawn.

Rejections under 35 U.S.C. §112, 2nd paragraph

The Examiner rejects claim 4, as being indefinite. Claim 4 has been amended as shown above to provide the ATCC accession number. It is requested that this rejection be withdrawn.

CONCLUSION

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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